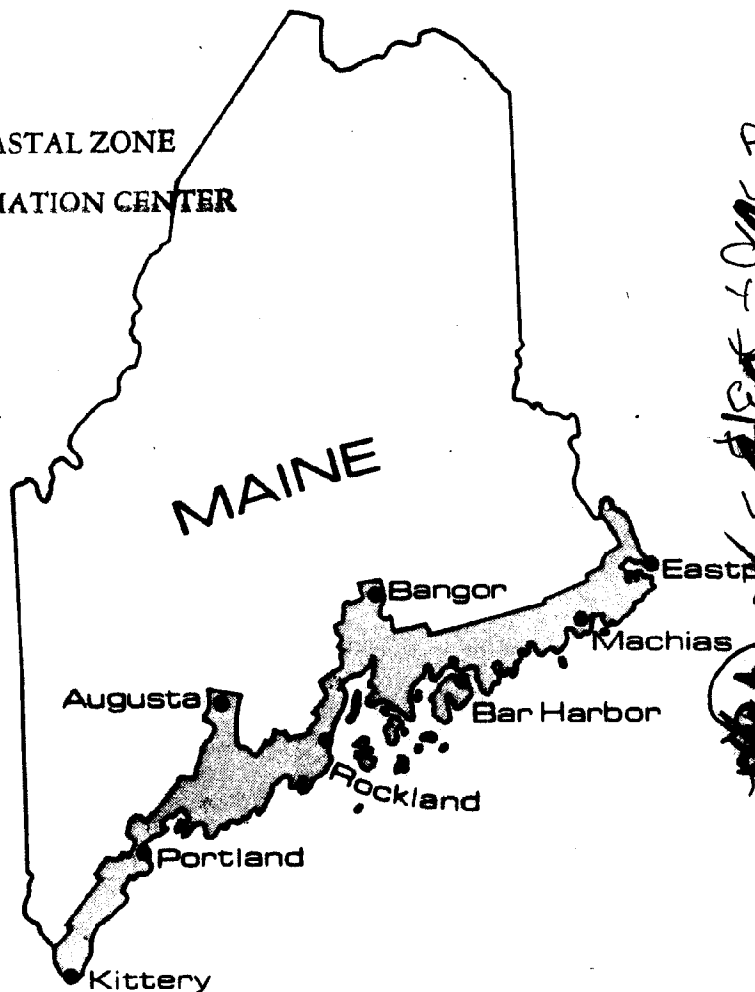


# Maine's Coastal Program

PROGRESS REPORT

December 1, 1983 - June 30, 1984

COASTAL ZONE  
INFORMATION CENTER



*Handwritten:* V.2 → Doris  
see questions on folded down corners & return with answers  
Answers noted inside on folded down pgs. Doris

*Handwritten:* Answers noted in side letter - just wanted to let you know I found this report by accident in the filing box in your office.  
*[Large blacked-out scribble]*  
dg 8/14/84

HT  
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M35  
DEC 1983-  
JUN 1984

itive Department

Maine State Planning Office

MAINE STATE PLANNING OFFICE

Progress Report

December 1983 - June 30, 1984

Submitted to

the National Oceanic & Atmospheric Administration  
Office of Ocean & Coastal Resource Management  
Washington, D.C. 20235

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\* Completed in previous reporting periods; no activities were supported by Coastal funds during this period.

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## HIGHLIGHTS OF THE REPORTING PERIOD

- o Addition of 71 critical areas to the Maine Register of Critical Areas (see page 6).  
(303) (2) (A) (1)  
This brings the number of registered areas with natural features of state significance up to 526. Registration is an important step in encouraging the conservation of this heritage, with its opportunities for natural history education, research, recreation, and maintaining diversity and stability in the natural system.
- o Establishment of a Coastal Advisory Committee by Executive Order of the Governor (see page 6).  
(303) (2) (F) (1)  
This is a cabinet level committee created in part in response to the January, 1984 evaluation findings for the Maine Coastal Program. The committee has responsibility for advising the Governor, the Legislature and State agencies. It is an important forum to promote wider discussion of coastal management issues, to coordinate and improve access to natural resource agencies involved in such issues, and to involve interested parties in guiding Coastal Program activities.
- o Issuance by the Army Corps of Engineers of its "Notice of Intent" to issue a permit for the Sears Island causeway and cargo port (see page 8).  
(303) (2) (C)  
The State successfully resolved a number of issues raised by the Corps of Engineers concerning the Sears Island project, allowing the Corps to issue its "Notice of Intent." This notice is highly significant because the Corps permit is the last one needed before construction can begin. Although other federal agencies may have questions about the project, the agencies concerned have 90 days to settle any differences through established elevation procedures. As soon as the Corp permit approval is final, the Maine Department of Transportation is ready to request proposals for constructing the causeway linking Sears Island to the mainland.
- \* o Co-sponsorship of Two conferences and a Television Series (see pages 9, 15 & 22).  
See p. 32. (303) (2) (H)  
A four-part series on "Planning: the Maine Perspective" was aired on television, co-sponsored by the State Planning Office and the Penobscot Valley Regional Planning Commission. Aimed especially at planning board members, municipal officials and developers, the series raised public awareness of local land use regulation in Maine.  
  
A Sand Dunes and Seawalls Workshop co-sponsored with the Maine Audubon Society helped re-establish in the minds of policy makers and the public an understanding of coastal processes and values and the wisdom of protecting them. It strengthened the partnership between the Coastal Program and conservation organizations, and provided an important forum for discussion of a controversial issue, especially

timely as it coincided with the DEP's working out of a variance procedure for dunes regulations.

The national conference on floodplain management, co-sponsored with the Association of State Floodplain Managers, was noteworthy because of the wide range of participants who exchanged information related to coastal flooding, including hurricane preparedness, barrier island development and protection, sea level rise and coastal mapping.

- o Completion of pre-publication drafts of a Public Access Study and the Maine Sandy Beach Atlas (see page 10).

(303) (2) (A) (B) (D) (H)

~~The Sandy Beach Atlas is the first comprehensive authoritative source on sandy beaches in Maine.~~ It describes the various beach systems in detail and provides guidance for beach management. The Public Access Study describes access needs for different purposes along the Maine coast. Its recommendations for action to improve coastal accessibility will be an important part of ongoing coastal management.

- o Signing of a Purchase & Sale Agreement for Acquisition of the Wells Estuarine Sanctuary (see page 13 ).

(303) (2) (A)

The groundwork was completed during the reporting period for the signing of this agreement in early July. The agreement provides for acquisition of 250 acres of land with a combination of federal and local funds.

The Wells Sanctuary is the only estuarine sanctuary in the Acadian Biogeographic Region, extending from Eastport, Maine to Cape Cod, Mass. It provides an ideal natural laboratory for research and comparison with other estuaries which have suffered from the effects of human activities.

- o Adoption of Measures to Improve Enforcement of Maine's State and local Land Use Laws (see page 24).

(303) (2) (A) (B)

In 1984 the 111th Maine Legislature enacted LD 2418 as its response to the findings of the Local Land Use Violation Commission. This new law significantly improves enforcement of Maine's State and local land use laws, especially those comprising the core of Maine's Coastal Program. The new law requires 75 foot minimum setback, gives District Court authority to hear and order correction of land use law violations, establishes certification programs for local and State enforcement officers, authorizes enforcement officers to issue a summons and represent their jurisdictions in court, strengthens penalty provisions, extends liability for violations to a landowner's contractor, awards legal fees to municipalities when they are the prevailing party, and establishes a clear right of entry for enforcement officers.

*When get copy per Sam H. on 8/20. if we send.*

*from what? Same Rivers?*

Enactment of LD 2418, and subsequent adoption by the Maine Supreme Court on July 11, 1984 of procedures and requirements for hearing land use cases in District Court (Court Rule 80K), means that action on land use violations can be expedited in court. Quicker prosecution of violators will deter future violations and demonstrate that State and local governments are serious about enforcing land use laws. The certification programs will put trained State and local government enforcement officers in the field, armed with the requisite authority.

o Updating of Coastal Program Management Authority (see page 23 ).  
(303) (2) (F) (G)

During the reporting period a routine program implementation package was completed for submission to OCRM. The package brings the core law authorities in the approved Coastal Program up to date with all of the changes in laws and regulations from 1978 through June, 1984. It also proposes additional regulations and laws for inclusion. The changes implement the goals and policies of the approved Program with refinements and further detailing. Their approval will strengthen the consistency of State and Federal decisions affecting coastal resources.

o Other Major Coastal Management Highlights  
(303) (2) (C) (E)

- A major attempt in the State Legislature to reduce the protection of sand dunes offered by the Sand Dunes Law was defeated.
- The Bath Iron Works Portland facility opened in December, 1983, and is currently in full operation with 600 people on the payroll.
- Phase II of the Portland Fish Pier project is well underway. The vessel services building is finished. The City is planning to construct a cooler building with EDA funds, bids have been received and accepted on other buildings, and site preparation work is being completed. West side berthing space has been leased to about ten large vessels. To date, the project has attracted about \$6 million in private investment.
- EDA approval is being awaited by the City of Rockland for a fish pier project on a new site, McLoon's Pier. Previously not available, the new site offers 830 feet of berthing compared to 160 feet at the original site. Instead of constructing a new pier, an existing pier will be rehabilitated. The revised project will be partly financed through sale of the original South End site, a private offer for which has been received by the City.
- The Stonington fish pier is about 50 percent complete and is expected to be finished this fall. Dredging by the Corps of Engineers is complete.

- The Eastport fish pier is open and operating.
- A concrete deck for fork lifts for more efficient off-loading operations was added to the previously completed Vinalhaven fish pier.
- Maine's fish pier development projects, started in 1978, in total comprise a \$20 million partnership investment between Federal, State and local governments, including over \$8 million from the State and \$9 million from the Federal level.



## SECTION I - Work Program Progress Report

### 1.1 Special Projects

#### Task 1: DEP Enforcement and Licensing Staff

During this reporting period no enforcement or licensing staff at DEP were supported with Coastal Funds.

The State Planning Office continued coordinating its coastal management activities with the DEP since December. Program planning was initiated to determine what new DEP initiatives could be supported with coastal funding, and the two offices continued working closely together on federal consistency issues.

#### Task 2: Shoreland Zoning Technical Assistance

Staff at the SPO, DEP, and the regional planning commissions continued to provide technical assistance to communities regarding shoreland zoning throughout this reporting period. Approximately 300 telephone calls relating to shoreland zoning technical assistance were handled directly by the SPO.

Many coastal communities improved or strengthened their ordinances to deal with changing development pressures along the coast. The following coastal towns amended their shoreland zoning ordinances during the period:

<u>Town</u>	<u>Date</u>	<u>Nature of Revision</u>
Deer Isle	March 5	Added regulations for the harbor district.
Kennebunkport	March 6	Change allowing only water dependent uses in, on or over the water.
Waldoboro	March 10	Text of the ordinance dealing with Resource Protection Districts tightened.
Mount Desert	March 5	Added one new zone and changed others.
Bremen	March 24	Increased minimum lot size from 20,000 sq. ft. to 40,000 sq. ft.
Old Orchard Beach	April 4	Added criteria to guidelines for reviewing permits.
Searsport	June 19	Specified a minimum 100' setback for non-water dependent structures in the commercial/intertidal district.

*Did you realize this? What did you say? Thank you for the information. I will be sure to get this information to the appropriate people. I will be sure to get this information to the appropriate people. I will be sure to get this information to the appropriate people.*

Task 3: Access and Enforcement Assistance

(Described in previous reporting periods.)

Task 4: Natural Areas Identification

The Critical Areas Program continued its inventory and designation of critical areas on a variety of subjects during this report period. Particular effort was devoted to official registration of rare plants, old-growth forests, and the nationally endangered Furbish Lousewort. Reports were prepared on T.15 R.9 in cooperation with the Maine Bureau of Public Lands (Department of Conservation), for use in developing management plans for the area. Benchmark reports were submitted to OCRM on a landowners survey and old growth stands in the Coastal area.

The Critical Areas Advisory Board met twice during the report period. There are currently 526 areas on the Maine Register of Critical Areas, an increase of 71 since the previous report.

Task 5: Policy Development on Natural Resource Issues

o Coastal Advisory Committee

On June 12, 1984 Governor Brennan issued Executive order 12 FY 83/84 creating the Coastal Advisory Committee. The State Planning Office took the lead role in developing the concept of the committee, holding discussions with affected State agencies, drafting the Executive Order and having the Governor issue the Executive Order. A significant improvement benchmark is met by this action.

The primary responsibilities of the Committee are to advise the Governor, the legislature, and State agencies on sound coastal management actions, and to coordinate State activities accordingly. The Committee seeks to involve affected and interested parties in the development and evaluation of programs and policies.

Specifically, the Committee:

1. periodically evaluates the Maine Coastal Program, recommends needed improvements;
2. determines annual work priorities, tasks, and budget allocations for State-level activities within the Maine Coastal Program;
3. assures effective coordination of coastal management activities among State agencies;
4. facilitates coordination of State coastal management activities with those of federal agencies, local governments, private citizens, and public interest groups; and

5. reviews activities pertaining to the Outer Continental Shelf Lands Act, and recommends appropriate State actions to the Governor.

Membership on this Cabinet level committee include:

- Director of the State Planning Office, Chairperson
- Commissioner of the Department of Conservation
- Commissioner of the Department of Environmental Protection
- Commissioner of the Department of Inland Fisheries & Wildlife
- Commissioner of the Department of Marine Resources
- Commissioner of the Department of Transportation
- A Representative of the Regional Planning Commissions
- A Representative of the University of Maine

The principal staff of the Committee is the Coastal Program Manager. The Program Manager is responsible for all Committee activities and for facilitating discussions on coastal management activities.

o Coastal Investment Strategy

The Coastal Program staff, with assistance from other SPO staff and state agencies, has initiated an analysis of investments in coastal waterfronts and tourism. Currently, the State has a wide variety of investment choices to make. At the same time private, local, state and federal funds are available to support these investments. The state is interested in coordinating these investments so the State can realize the greatest benefit.

The Coastal Investment Strategy has five major tasks as described below:

Task One: Programs and Policies Affecting Public Investments

Purpose - To identify and analyze key State and, to the extent appropriate, federal agency programs and policies that affect investments in waterfront development and tourism.

Task Two: Key Factors in Successful Coastal Development Initiatives

Purpose - To identify what factors are essential to successful coastal waterfront development initiatives and to describe methods for the State to implement them.

Task Three: Economic & Social Characterization of the Coast

Purpose - To identify how the economic and social resources of the coast affect coastal investments. Emphasis on past, current, and projected trends will characterize the coast by region.

#### Task Four: Natural Resource Characterization of the Coast

Purpose - To identify key land use changes in the coastal area since 1960 and discuss how they have impacted the condition of natural resources. This task will assess how the quality and availability of key resources have changed in general and in the shoreland area specifically. It will identify trends, constraints and opportunities for future growth and development, especially for water-dependent uses, and for better managing important resources.

A second purpose of this task is to identify what indicators of environmental change the State should actively monitor so as to be able to determine the effects of policies and programs.

#### Task Five: Investment Guidelines

Purpose - To develop guidelines the State can use to capitalize on investments made in coastal waterfronts and tourism.

A draft work program has been developed and will be submitted to the Coastal Advisory Committee for review and comment at their next meeting.

#### Task 6: Abatement of Clam Flat Pollution

(Completed in previous reporting periods.)

#### Task 7: Sears Island Development Project

Work on the Sears Island development project focused on securing the Army Corps permit for the causeway and initial port development during this period.

The Army Corps requested more information and analysis from the state to substantiate that project impacts would be minimal. Key issues which had to be worked out between the State and the Corps during the period included:

- impacts of the causeway on flushing rates in the harbor;
- the practicality of mitigating impacts in the sub-tidal and intertidal areas; and
- adequate buffering of the development from the Sears Island shoreline.

At the Corps' request, the Maine Department of Transportation conducted extensive additional site testing to assure that the proposed causeway would not adversely impact water quality in the harbor. This additional information was submitted to the Corps in early spring.

The issue of mitigating subtidal habitat impacted by the development by creating new habitat was studied by State and federal agencies and determined to be impractical.

To address Army Corps' concerns regarding development setback from the water, the Town adopted revisions to its shoreland zoning and subdivision ordinances in June. All non-water dependent uses located in the industrial zoned shoreland areas must be set back at least 100 feet from the shoreline under the newly adopted zoning provisions.

The State worked closely with Army Corps staff during this period to assure there would be no further delays in issuing the Corps permit. Corps staff informed the Maine DOT and SPO that the recommendation to issue a permit would be presented to the Division Engineer the end of June.

The Army Corps notified the State the last week of June that it still had concerns and would not approve the permit for the causeway and cargo port unless these new concerns were addressed. Their new concerns centered around the cumulative impact of development on Sears Island once the causeway and port were built. The Corps wanted assurances that development of the Island would be adequately buffered from the shoreline.

Officials from the Maine Department of Transportation and SPO flew to Waltham and met with Major Hammond and other Corps officials to discuss and resolve this problem. The existing local and State regulatory controls which would apply to further development of Sears Island were detailed for the Corps by Coastal Program staff. These include local shoreland zoning and subdivision ordinances and the State's Site Location and Wetlands Alteration laws.

With the agreement that the State and private landowners on the island would exert additional land use controls along the southeastern shoreline of the island, the Corps agreed to issue the permit for the causeway and cargo port. The Corps issued a 'Notice of Intent' to issue the permit on July 5th.

Since issuance of the Notice of Intent for Sear's Island, two federal agencies, National Marine Fisheries Service and U.S. Fish and Wildlife Service, have indicated they may request that the Corps permit be elevated.

The State Planning Office is coordinating with the MDOT, the Army Corps, other State agencies and OOCRM in responding to the concerns of these federal agencies. A complete package of environmental studies and designs for the Sears Island Causeway and port facility was compiled and sent to OOCRM. The Maine D.E.P. also sent OOCRM copies of State permits perviously issued for the proposed facility.

#### Task 8: Investigation of Special Issues

- o Sand Dunes and Seawalls Conference

The State Planning Office/Coastal Program co-sponsored a conference on

sand dunes and seawalls with the Maine Audubon Society on May 11, 1984. One of the major reasons for the conference was to air varying points of view on how the sand dune and wetlands protection laws are working and on where improvements can be made. Another purpose was to reestablish in the minds of policy makers and the public an understanding of coastal processes and values and the wisdom of protecting them.

The public was given notice of the conference through newspaper and magazine display ads and a brochure sent to more than 1000 individuals and organizations. More than 75 people attended five major sessions reviewing sand dune and wetland regulations and discussing the rational for sand dune and wetland preservation, policy at the federal level and in other states, and protection alternatives.

Presentations were balanced, very well received by the audience, and received good media coverage (See Appendix, Exhibit A). As a result of the conference Maine Audubon has been asked by Down East Magazine to submit a 1500 word piece on coastal protection, and the Boston Globe is preparing a series on coastal issues including conference material.

#### Task 9: Public Access Study

A report on the public access study has been completed in draft form, based on the survey of user groups described in the Progress Report for January 1, 1983 to November, 1983. The report describes the public's perception of coastal access issues and characterizes problems specific to certain user groups and geographic areas in Maine. It also documents access needs as identified by town officials for a variety of commercial and recreational purposes, along with actions by federal, state and local governments and the private sector to protect and improve coastal accessibility. The report makes the following recommendations:

- o The public's right to use the intertidal zone for recreation should be clarified.
- o Municipalities should research and record shoreline accessways.
- o A brochure should be distributed at land transactions which describes customary public access and prescriptive rights.
- o The provision of meaningful public access should be a requirement of coastal subdivision permit approval.

#### Task 10: Maine Sandy Beach Atlas

The State Planning Office worked closely this spring with the principal author, Dr. L. Kenneth Fink, Jr., in preparing a final draft of the Maine Sandy Beach Atlas.

All data analysis and interpretation is complete, and new information has been incorporated into the Atlas so that current and complete descriptions for every major sand beach system in Maine will be available.

~~Missed contacts  
for sand dunes~~

get copy for me & copy of grant description

process from local last year 3 yrs ago. I don't know if I want to bind it or not type of request for it May have been done under the 50% papers writing I'll check if you want to live.

Information developed for the Atlas was incorporated into work done by Maine regarding barrier islands protection.

The SPO is distributing the Sandy Beach Atlas for peer review, soliciting comments from leading experts in coastal and marine geology and ecology this summer.

#### 1.2 Local Projects

All local projects except two were completed in December, 1983. Delayed by adverse weather, the Machiasport Quahog Research Project was completed in February, 1984. As a direct result of the study, the University of Maine at Machias applied for Sea Grant funding for further research into quahog growth rates. Hancock County's regional solid waste investigation was completed in April, 1984, though the Regional Landfill Study Committee continued with final negotiations and legal work under separate funding.

#### 1.3 Regional Planning Commissions

(No Coastal funds supported regional planning commission activities during this reporting period.)

## SECTION 2 - Monitoring & Enforcement Activities

No Coastal funds supported monitoring and enforcement activities during this period. Note, however, the authorization by the 111th Legislature of a new fee system for state environmental licenses and permits, and creation of a new Maine Environmental Protection Fund to support the DEP's licensing program (See Appendix, Exhibit B). Also note defeat of a major attempt in the Legislature to reduce the protection of sand dunes offered by the Sand Dunes Law, and) Legislative action on the findings of the Local Land Use Violation Commission described in Section 18, Item 3, and in Exhibit D in this appendix to this report.



### SECTION 3 - Wetland/Estuary Report

Although work on the estuarine sanctuary is not an eligible grant activity, it is an important coastal activity. During the reporting period the following tasks were completed.

#### 1. Fund Raising

On April 3, 1984 Richard Barringer, Director of the State Planning Office, submitted documentation to the Office of Ocean & Coastal Resource Management that \$682,039 in State matching funds were available to match federal acquisition funds. This amount exceeded the \$580,000 which the OCRM required be raised by March 31, 1984. The State match, as described below, is comprised of in-kind services, cash and land.

In-kind Services	\$ 76,158
Cash	130,474
Pledges	56,407
State Grant (cash)	250,000
Land	139,000
	<hr/> 682,039

On April 12-13 Jack Archer and Ken Moyer with the OCRM came to Maine to gather detailed match documentation and to discuss other Sanctuary Program requirements. On April 23, the OCRM informed the State Planning Office the \$580,000 goal had been met and that we should now focus on matching the September, 1983 federal award of \$200,000 by December, 1984.

The Laudholm Trust, on behalf of the Town of Wells, continued to raise funds for the sanctuary.

#### 2. Programmatic Requirements

- A. A Memorandum of Understanding between the Town and the U.S. Fish & Wildlife Service was approved by the OCRM during the reporting period. Copies were sent to the State and Town for signature. Approval and signature of this MOU is a major accomplishment of the period.
- B. Portions of the acquisition plan, related to land values and actual acreages of the Farm Property, were dealt with during the reporting period. By correspondence to the OCRM dated March 30 Richard Barringer explained there were conflicts in the total acreage figures between a 1980 survey of the Laudholm Farm and the Town's tax maps. On April 4th the OCRM determined the fair market value of the Farm as follows:

<u>Type of Land/Improvements</u>	<u>Acres</u>	<u>Value</u>
wetland	130.5	\$ 290/acre
subdivided	11.54	10,700/acre
developable	151.5	8,200/acre
improvements		168,018

In response to the OCRM determination of fair market value, the State decided to wait until we know what property we will purchase. At that time a detailed survey will be performed to determine the perimeter of the property and to identify the types of land to be acquired. Depending on the outcome, the fair market value of the farm may be adjusted accordingly.

- C. The SPO received comments from the OCRM on the draft management plan in March. The SPO has assumed full responsibility for preparation of the plan and resubmitted a revised management plan in May.

3. Other

- A. In December, 1983, the Laudholm Farm property was submitted to the York County Superior Court for partition. Two of the three Commissioners, to be selected by the three Trustees, were agreed upon in March. After the third Commissioner is selected the lawyers, representing the three Trustees, will explain to the Commissioners what property their clients want. After hearing all information the Commissioners will make their recommendations to the Superior Court.
- B. In February the Natural Resources Council of Maine passed a resolve on the Wells Estuarine Sanctuary. In summary, the resolve recognizes the importance of the estuarine sanctuary and identifies it to be "of the highest priority among public land acquisitions in the entire State of Maine. The State welcomed the support of the NRCM for this project.

In May, the owners reopened discussions on selling the property to the Town. A draft Purchase & Sale Agreement is currently circulating which could be signed as early as July 15, 1984.

#### SECTION 4 - Fisheries Management Activities

(No activities were supported by Coastal funds during this reporting period.)

## SECTION 5 - Hazard Management Activities

### o Coastal Barriers

The Coastal staff and the State's marine geologist began work on identifying additional coastal barriers and on discussing appropriate management strategies. Several meetings of the northeast regional task force were held to coordinate New England activities.

### o Flood Hazard Management

Cumberland County coastal communities received new Flood Insurance Studies from the Federal Emergency Management Agency and are currently in the process of converting from the Emergency to the Regular Program of the National Flood Insurance Program. Conversion is expected to be completed by mid-1985 which means that new flood maps and stricter development ordinances will be in place for all coastal communities from Kittery to Brunswick.

The State Planning Office co-sponsored a national conference on floodplain management with the Association of State Floodplain Managers. The topic of the conference was Managing High Risk Flood Areas - 1985 and Beyond. Many subjects related to flooding were covered, with primary emphasis on coastal flooding. Subjects included hurricane preparedness, barrier island development and protection, problems with coastal mapping, sea level rise, and other subjects. Attendees included both Canadian and U.S. federal employees, state employees from 42 states, and private sector experts.

The State Planning Office Flood Insurance Coordinator has been involved in the review of all coastal development permits. Of particular interest is the increase in applications for development of high density multi-family structures, particularly condominiums, along the coast. Permits for structures in non-flood prone areas (designated as Zone C on flood maps) immediately abutting the coastal floodplain now are required to elevate first floors a minimum of 4 feet above the 100-year flood level; to use post construction or bearing walls perpendicular to flow; and to use collapsable break-away walls in the area below the first floor.

These requirements are made to protect investment in these costly structures, reduce flood damages in future disasters, and increase the useful life of structures by additional protection from the threat of rising sea level.

## SECTION 6 - Urban Waterfronts, Commercial and Recreational Harbor Projects

All projects in this category supported with Coastal Management funds were completed in the previous reporting period. However, State Planning Office staff planned for the new round of waterfront planning projects. The 1984 local grants will focus on demonstration waterfront development/revitalization projects; emphasize closer coordination between local project managers; and be designed to serve as models for other coastal communities wishing to undertake waterfront projects.

## SECTION 7 - Coastal Access Activities

(No activities were supported by Coastal funds during this reporting period.)

## SECTION 8 - Permit Procedure Simplification

The Maine Legislature passed two legislative initiatives in April which simplify permit procedures in Maine's coastal area.

One bill, Public Law 743, simplifies core laws administered by the Maine Department of Environmental Protection by establishing one uniform administrative process by which all permits will be reviewed. The law also decreases, from 180 calendar days to 105 working days, the processing time for licenses issued under the Protection and Improvement of Air Law, one of the Program's core laws.

Public Law 819 streamlines core law permitting in the unorganized portions of the State where the Land Use Regulation Commission (LURC) has jurisdiction. Previously, applicants undertaking gravel extraction or land subdivisions required a Site permit from DEP and a separate permit from LURC; applicants impacting streams or rivers needed a Stream Alteration permit from the Department of Inland Fisheries & Wildlife in addition to their LURC permit.

This new law requires that the applicant receive just one permit from the Land Use Regulation Commission, which coordinates its review with the other core law agencies to insure consistency with the Site Law and Stream Alteration Law.

## SECTION 9 - Activities Related to Protecting and Restoring Cultural Coastal Resources

(No activities were supported by Coastal funds during this reporting period.)

SECTION 10 - Coastal Energy Impact Program Report

The status of projects under Maine's Coastal Energy Impact Program (CEIP) was fully reported in CEIP performance reports for the period January 1, 1984 to June 1, 1984. Current projects are as follows:

Bangor - Emergency Boat Launch  
South Portland - Spring Point Shoreway  
Dept. of Marine Resources - Penobscot Bay Study  
State Planning Office - Review of OCS Exploration & Development  
Bureau of Public Lands - Submerged Lands Proceedings  
State Planning Office - Policy Analysis & Program Administration  
Bigelow Laboratory - Bay of Fundy Tidal Power Study  
State Planning Office - Economic Modeling for Energy Impact Analysis  
State Planning Office - Coastal Tidal Power Capabilities Analysis

SECTION 11 - New Memorandum of Understanding

(None in this reporting period.)

## SECTION 12 - Coordination & Administration of Federal Review Process

This section summarizes federal consistency reviews and state coordination in reviewing federal activities. The following activities are reported:

### A. Consistency Reviews of federal Activities

Three federal activities were reviewed for consistency during the reporting period: Dept. of Interior, National Park Service; proposed improvements to parking area at Fabbri Memorial, 4/19 consistent; proposed parking and roadway improvements in Acadia National Park, under review at the close of the reporting period; and Dept. of the Navy, proposed boat launch for Casco Bay oil spill response, under review at the close of the reporting period.

### B. OCS Reviews

See page 25.

### C. Army Corps Regulatory Reforms

The State Planning Office arranged a meeting in Augusta on May 8th for the purpose of reviewing Army Corps regulatory changes with Coastal Program core law agencies. Ken Jackson of the New England Division explained the changes outlined in the March 29 Federal Register.

The State Planning Office gathered core law agency comments and coordinated consistency reviews of the twenty-six nationwide permits submitted by General Edgar for concurrence. The SPO letter dated June 8 responded to the latest Corps' regulations and gave conditional concurrence to all nationwide permits. ✓ 6/2

Subsequent communications between SPO and the Army Corps indicates that the conditional concurrences will be acceptable to the Corps if modified slightly. Final modifications will be negotiated before the final Corps' regulations are published this fall.

### D. Consistency Report

A revised guide to Federal consistency under the Coastal Program was completed in draft form, meeting a significant improvement benchmark.

### E. Consistency Log

(See following pages)

### F. Coordination Activities by the Coastal Program Staff

During the reporting period the Coastal Program staff was involved in at least five meetings with Federal agencies, twenty or more interagency meetings, more than a dozen general coordination meetings, and sixteen other meetings and conferences, together with countless informal personal contacts.

*These are phone calls*

CONSISTENCY LOG

<u>Issue/Activity</u>	<u>Date</u>	<u>Agency</u>	<u>Subject</u>
Dredging	2/16/84	DEP, SPO, ACE, DMR	Meeting in Kittery to discuss Piscataqua River dredging project
Regulatory Reform	5/8	SPO, ACE, and core law agencies	Meeting to discuss regulatory reforms; consistency and water quality certification of nationwide permits.
Regulatory Reform	5/17	Sam Collinson, ACE, Chiefs Office	Discussed consistency conditions on nationwide permits.
Regulatory Reform	5/21	Ken Jackson, ACE	Discussed regulatory reforms; consistency and water quality certification of nationwide permits.
Regulatory Reform	5/21	Nan Evans, Doris Grimm - OCRM	Discussed Corps of Engineers' regulatory reforms and consistency.
Regulatory Reform	5/29	Ken Jackson, ACE	Discussed regulatory reforms; consistency and water quality certification of nationwide permits.
Consistency	5/30	Tina Suarez - Murias-Connecticut CZM	Corps' nationwide permits and Connecticut's consistency response.
Consistency	6/1	Mike Penny - MA CZM	Massachusetts CZM consistency response to ACE - nationwide permits
Consistency	6/21	Ken Jackson	Initial ACE chiefs office reaction to Maine's consistency response.
Acadia Nat'l Park	6/4	Mike Wilderman of the Nat'l. Park Service	Acadia Park road and parking lot improvements.

<u>Issue/Activity</u>	<u>Date</u>	<u>Agency</u>	<u>Subject</u>
Acadia Nat'l Park	6/19	Mike Wilderman of the Nat'l. Park Service	Acadia Park road and parking lot improvements.
Acadia Park	6/21	Mount Desert & Bar Harbor Officials	Letter regarding improvements proposed in Acadia Park
Consistency	6/25	DEP	Teco Brown from DEP called to discuss U.S. Navy boat launch proposal for Casco Bay.
Consistency	6/26	ACE - Ken Jackson	Consistency of nationwide permits.
Sears Island	6/26	Searsport	Deputy Division Engineer wants assurances of buffer strip around island.
Acadia Park	6/28	Mike Wilderman of the Nat'l Park Service	Called to say certification in mail regarding Acadia project.
Consistency	6/28	Ken Petrone, US Navy	Proposed boat launch for Casco Bay - will they consider using precast concrete slabs?
Consistency	6/29	Ken Petrone, US Navy	Called in response to precast concrete slabs - no, already designed.
Consistency	6/29	DEP	U.S. Navy boat launch proposal for Casco Bay.
Sears Island	6/29	DOT - Rob Elder	Discussed Army Corps concerns.
Consistency Review	6/29	Chad Gilpatrick - Town of Mt. Desert Planning Board	Consistency review of proposed park improvements at Ikes Point.
Acadia Park	7/3	Mike Wilderman of the Nat'l Park Service	Notified Mike that concurrence will be mailed.



<u>Issue/Activity</u>	<u>Date</u>	<u>Agency</u>	<u>Subject</u>
Sears Island	7/2	MDOT/ Army Corps	Meeting with Major Hammond in Waltham regarding Sears Island permit.
Consistency	7/2	Ken Jackson, ACE	Regarding consistency conditions on nationwide permits.

14c/

### SECTION 13 - Public Participation Activities

- o The State Planning Office co-sponsored a four-part television series about planning boards and local land use regulation, aired in May on Maine Public Broadcasting Channel 12 and WCBB Channel 10 (see Appendix, Exhibit C).
- o The coastal staff participated in a variety of speaking engagements including: the 1984 New England Environmental Conference Regional Water Issues Workshop, Maine Audubon's Sand Dunes and Sea Walls conference, and a panel on the proposed Bay of Fundy Tidal Power Project. In addition, SPO staff participated in preparation of "Planning: The Maine Perspective", a four-part series for television co-sponsored with the Penobscot Valley Regional Planning Commission.

### SECTION 14 - New Publications Report

<u>Date</u>	<u>Title</u>	<u>Copies</u>	<u>No. of Pages</u>
12/12/83	Whitewater Rapids	500	1
12/1/83	Small Cities Financial Management Project	10	76
3/29/84	Planning: The Maine Perspective- Brochure	5000	2
3/29/84	Planning: The Maine Perspective - Cover	1000	1
4/11/84	The Maine Perspective	75	9
4/27/84	Handbook for Local Code Enforcement	200	122
6/29/84	A Planner Handbook on Maine's Intertidal Habitats	500	88

### SECTION 15 - LCPs

(Not applicable to Maine.)

## SECTION 16 - Changes to Coastal Zone Boundaries and Management Authority

During the period there were no changes made to Maine's coastal zone boundary. In January a routine program implementation package containing changes in the core laws between August 1978 and January 1984 was submitted for OCRM's informal review, together with additional laws and regulations proposed for inclusion in the Coastal Program. By the end of June, a final routine program implementation package was nearly ready for public notice and submittal to OCRM in July, including core law changes made in 1984 by the 111th Legislature.

## SECTION 17 - Report on Changes in the State's Management of Coastal Resources

The most significant change in the State's management of coastal resources was the establishment of the Coastal Advisory Committee. The Committee is comprised of Cabinet level officials responsible for different aspects of coastal management related activities.

For a complete description of the Committee and its mandates, see Section 1.1 - Task 5.

## SECTION 18 - Major Coastal Issues

### 1. Fundy Tidal Power

The proposed Fundy tidal power continues to be an important coastal issue. Three significant developments occurred during the reporting period.

- A. In May, the Bigelow Laboratory completed their report on the possible consequences of the tidal power project on the Maine coast. Two hundred fifty copies (250) of the report were printed by the SPO and distributed to interested persons.
- B. May 23-25, 1984 - New England Governors' Conference/Eastern Canadian Premiers Meeting - This meeting resulted in the development of a staff consensus on three issues:
  - 1. The U.S. and Canada should request their respective governments to refer the Fundy issue to the International Joint Commission.
  - 2. An interdisciplinary committee, patterned after the Canadian Fundy Environmental Studies Committee should be established; and
  - 3. The New England Governors' Conference should serve as the library and dissemination of information on the Gulf of Maine/Bay of Fundy region.
- C. June 14-15 - New England Governors and Eastern Canadian Premiers meeting in Newport, Rhode Island - They acted on the staff recommendations. With regard to the referral to the International Joint Commission, the premiers of Quebec requested more time to study the referral so further action was postponed.

### 2. Searsport Cargo Port Development

(See Section 1.1, Task 7 of this report.)

### 3. Local Land Use Violation Commission

The mandate of this Commission, established by the Legislature, was fully described in earlier progress reports. The 111th Maine Legislature has now acted on the Commission's findings with enactment of L.D. 2418. This new law will significantly improve enforcement of Maine's State and local land use laws, especially those comprising the core of Maine's Coastal Program. The major provisions of the law are

described in the appendix to this report (see Exhibit D, letter to Kathryn Cousins from Richard E. Barringer, dated May 1, 1984). One the provisions of L.D. 2418 granted equity jurisdiction to District Court in cases involving alleged land use violations. To be operational, this provision required adoption by the Maine Supreme Court of a Court Rule establishing procedures and requirements for hearing such cases. The Court adopted Rule 80k for this purpose on July 11, 1984, thus meeting an August 1 Coastal Program Benchmark.

#### 4. OCS Activities

The major focus of state Outer Continental Shelf (OCS) activity in this period was on the proposed Lease Sale 82. The Final Environmental Impact Statement was reviewed, and review was begun of the Proposed Notice of Sale and the accompanying analysis. Comments were prepared on the Department of the Interior's request for comments on longer primary lease terms. Regular participation in the OCS Advisory Board also took place. An additional task was assisting the Department of the Interior in the preparation of summaries of Environmental Studies Program reports.

#### SECTION 19 - Equal Opportunity Report

One of the seven SPO professional staff positions funded by Coastal or CEIR funds is held by a female; this is one of three positions fully funded with such funds. The two clerical positions are held by women. Staffing of contracted projects was covered in previous progress reports.

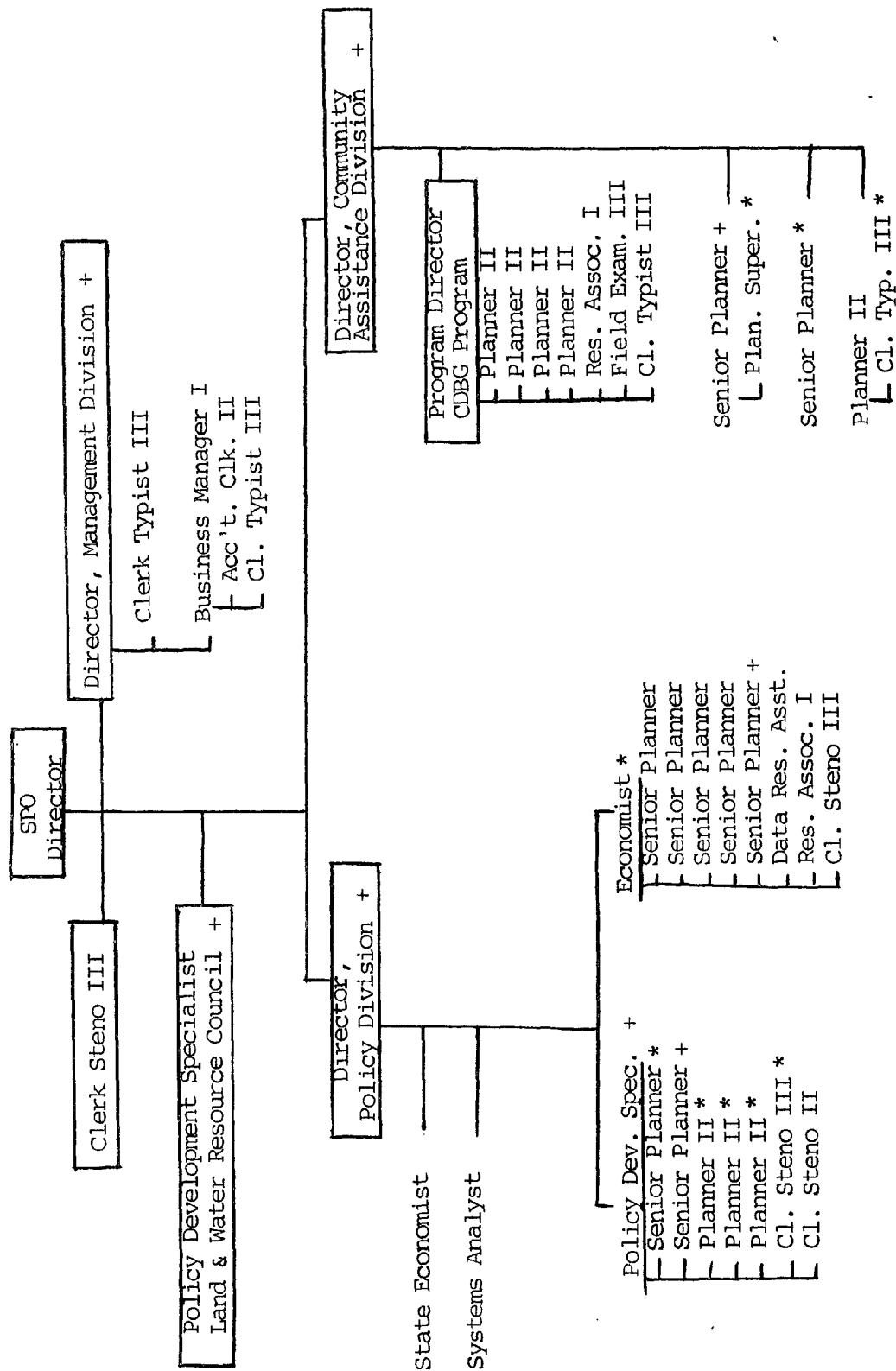
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## SECTION 20 - Current Staffing Report

<u>Staff</u>	<u>Source of Funding</u>	<u>Responsibilities</u>
1. David Keeley	40% Coastal	Program Manager - Grant Management & Policy Work
	40% CEIP	Program Manager - Grant Management & Policy Work
	20% Other	Other duties
2. John DelVecchio	80% Coastal	Local Grant Coordinator - Federal Consistency, Policy Work, RPC liaison
	20% Other	Capital Improvement Planning
3. Harold Kimball	80% Coastal	Local Grants, Technical Assistance
	20% Other	A-95 Coordinator, Environmental Officer
4. Bob Blakesley	70% Coastal	Local Grants, Policy Work, Technical Assistance
	30% CEIP	Local & State Grants
5. Gro Flatebo	100% Coastal	Technical Assistance, Policy work, publications
6. Dick Kelley	40% Coastal	Critical Areas Program
	60% Other	Graphics, low level nuclear waste, etc.
7. Charles Colgan	100% CEIP/OCS	OCS Coordinator - Policy Work
8. Aline Lachance	80% Coastal 20% CEIP	Secretarial Support Secretarial Support
9. Lorraine Lessard	100% Coastal	Secretarial Support
10. Support Staff	40% Coastal	bookkeeping, accounting, data management
	60% Other	bookkeeping, accounting, data management

13/

## State Planning Office Organizational Chart



\* Coastal Program Staff

\* Coastal Program staff  
+ Other SPO staff working on the Coastal Program

June 1984

APPENDIX

Exhibit A — Sand Dunes & Sea Walls Conference Clippings

Exhibit B — DEP Press Release regarding New Fee System & Environmental Protection Fund

Exhibit C — Planning: The Maine Perspective

Exhibit D — Letter to Kathryn Cousins from Richard Barringer, dated May 1, 1984 regarding L.D. 2418 and the enforcement of land use laws.



and, Maine, Press Herald, Tuesday, May 1, 1984

## Sessions focus on beaches

By BOB CUMMINGS  
Staff Writer

SCARBOROUGH — The conflicting roles of sand dunes and sea walls in the preservation and destruction of Maine beaches will be explored at an all-day conference May 11 at Black Point Inn on Prouts Neck.

Scientists, legal experts, regulatory agencies, developers and environmental groups will explore the "dynamics of coastal environments" and how these dynamics will determine the fate of the tiny fringes of sand upon which much of Maine's coastal attractions depend.

The sessions will be sponsored by Maine Audubon Society and the Maine State Planning Office.

Sponsors say they seek to bring together experts and the public for a discussion of the issues involved in regulating development. A major emphasis will be the com-

plex of state laws, the reasons they were proposed and adopted and the resources the laws seek to protect.

William Plouffe, staff attorney for Maine Audubon, reports the conference seeks to attract "coastal landowners, conservationists, community leaders, scientists, builders, legislators, academic (types) and the general public."

A registration fee of \$15 includes the cost of lunch at the Inn.

Joseph Kelley, director of marine geology for the Maine Geologic Survey will be moderator for a debate about how beaches were formed and continue to survive and the forces involved in their destruction.

Speaking will be Kenneth Fink and Barry Timson.

Timson is a geologist who has specialized in beaches and who has represented development interests at numerous regulatory hearings.

Fink is a beach specialist from the University of Maine at Orono who has worked closely with environmental groups in developing and interpreting the laws that control construction in and around Maine coastal beaches.

Also speaking will be Jane Arbuckle, a wildlife specialist with Maine Audubon, and Barbara Vickery, a botanist employed by the Nature Conservancy.

Samuel Zaitlin, new chairman of the board of the Department of Environmental Protection, will be the luncheon speaker.

Other panels will deal with sand dune and coastal wetland laws, the role of the federal government in beach matters and a look at alternatives to the present laws and regulations.

The registration deadline is Monday. Information is available from William Plouffe, Maine Audubon Society, 118 Route 1, Falmouth.

40

Portland, Maine, Evening Express, Friday, May 11, 1984

# Spotlight hits dune laws

## *Enforced unfairly, Audubon conference told*

By BOB CUMMINGS  
Staff Writer

SCARBOROUGH — State sand dune laws are enforced unfairly, attorney Daniel Snow charged this morning at a conference being sponsored by the Maine Audubon Society.

Snow told of clients at Pine Point being denied the right to build sea walls to protect their homes while a few thousand yards away, new eight-story condominiums are being built near the open ocean at Old Orchard Beach.

"There is inconsistency and unfairness in the way the law is administered," he said.

Donald Witherill of the Department of Environmental Protection said the Old Orchard Beach construction was allowed because federal flood insurance maps claimed no flood hazards existed.

But Witherill conceded that if he lived in the Old Orchard condomini-

ums he would want the protection of flood insurance, nevertheless.

Charles Hewett, executive director of Audubon, commented that it is "very important for the regulations to work efficiently and fairly."

Virginia Davis, an attorney for the Natural Resources Council of Maine, said the regulations seek to recognize "the unique and shifting character of sand dunes and the fact that sea level has been rising steadily for at least a century."

She said regulations are needed because beaches have to absorb wave energy, and if the beaches are destroyed, the structures behind them will also eventually be destroyed.

"Beaches must be allowed to recede landward. If this natural movement is blocked," Ms. Davis said, "beaches will cease to exist."

Witherill said changes are being proposed in the regulations that would allow more flexibility in the

rules. He said a public hearing on the change will be held at 4 p.m. May 30 at Southern Maine Vocational Technical Institute in South Portland.

He said the department staffs role is to resolve conflicts and to enforce the law.

"It is up to us to decide what is reasonable and what is unreasonable," Witherill said.

Snow reminded the audience that until five years ago beach owners had an almost absolute right to do what they wanted with their land.

"All that has changed dramatically. There is shock factor by those who suddenly find out that they cannot build on property they have spent thousand of dollars to purchase or that they have to build their new homes on posts to avoid interfering with the flow of storm waters," he said.

"Sometimes they discover they cannot even walk on their property to get to water, that a raised walkway is required over the sand dune."

# Portland Press Herald

Vol. 122, No. 279

30 Cents

Portland, Maine, Saturday, May 12, 1984

\* 30 Pages

## Beaches

### Risks of building on dunes debated

By BOB CUMMINGS  
Staff Writer

SCARBOROUGH — An Old Testament injunction 3,000 years ago warned against building houses on shifting sands.

The risk has increased in the years since, if testimony at an all-day conference sponsored by Maine Audubon Society Friday is to be believed.

Rising sea levels and the gradually sinking crust of the earth doom most structures that are being built on sandy edges of the ocean in Maine and there is little if anything humans can do to help, insisted Kenneth Fink, an ocean geographer from the University of Maine at Orono.

In fact, Fink thinks most human intervention will make matters worse.

Coastal Geologist Joseph Kelley told of desperate attempts in New Jersey, Delaware and Louisiana to stem the gradually encroaching waters — all of which have failed or are failing.

Kelley said elaborately engineered buildings can be built that are capable of withstanding most storms.

But he said the cost is prohibitive except for massive high-rise structures that in a sense become artificial islands.

Even one bridge in a midcoastal state — built in a vain attempt to spur coastal development — failed after two years of severe storms.

The eight-hour session explored the environment of coastal Maine, the forces affecting it and the laws that have been passed to minimize the damage.

Much of the session was devoted to the wisdom of current regulations governing construction on sand beaches.

Carolyn Woodbury, whose home at Pine Point is threatened by rapid erosion caused by ocean waters, said the only "permanent" step the Department of Environmental Protection would allow to protect her home is the installation of sandbags.

"They approved those because they said sandbags would fail anyway and thus do no harm," she

said.

"Our only relief is to do something that the department says won't work."

Donald Witherill of the department said new seawalls are generally prohibited because of evidence that they accelerate erosion on adjacent properties.

But he said rules are being changed to allow some extra flexibility.

Barry Timson, a consulting geologist who frequently battles with environmental groups over strict construction limits on sand dunes, said the law should be changed.

"The burden of proof has shifted from society to the developer," he charged.

And he said the laws often lack a scientific basis. "The scientific rationale for prohibiting the filling of salt marshes is that they contribute nutrients needed by fish life in the oceans," he said.

But he said the latest evidence suggests salt marshes make almost no contribution to ocean fish life.

However, Barbara Vickery, a botanist employed by the Nature Conservancy, and Jane Arbuckle, a wildlife expert with Maine Audubon, had other reasons for protecting the marshes.

Both said the marshes are homes to birds, animals and rare plants that deserve protection.

Timson also thought it was unfair for the courts to fine a Kittery developer thousands of dollars for filling a salt marsh when the Department of Transportation routinely fills marshes and no one complains.

Donald Kale of the Portland Regional Office of the state environmental agency said the difference is that the highway department applies for permits, while the developer failed to do so.

There was much debate over rules that allow multi-story condominiums to be built on the edge of the ocean at Old Orchard Beach, while the dumping of rocks along the shore to protect

See DUNES  
Back page this section

## Dunes FROM PAGE 1 —

Mrs. Woodbury's home and those of her neighbors is prohibited.

Fred Michaud, who runs a subsidized federal flood insurance program, said the condominiums aren't located in a flood-prone area.

Kelley said the Old Orchard buildings are so well constructed "that they will outlast the beach."

Virginia Davis, an attorney for the Natural Resources Council of Maine, wrote most of the dune regulations under contract with the state.

She said the rules mostly codify practices the department was following and are designed to protect beaches from unnecessary erosion.

In the natural world, beaches gradually migrate landward in response to higher water levels. If seawalls interfere with that migration, the sand is washed out to sea and the beach is lost for all time, she said.

Kelley agreed. He told of one beach that was lined with cottages in Lubec 80 years ago, but which has now migrated a full mile away, "long since destroying all the buildings in the process."

Samuel Zaitlin, chairman of the environmental board, said "sand dune issues are the most contentious and controversial matters" the board has dealt with in his five years with the agency.

He conceded that mistakes were made during the early days of dealing with the "witch's brew" of sand dune regulation. But he said the constant parade of applicants, consultants and opponents has given the board a crash course in sand dune matters.

He promised "consistent and evenhanded administration of the law."

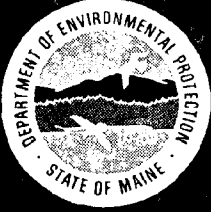
Several persons criticized the federal flood insurance program as unnecessary subsidies for persons prosperous enough or lucky enough to own beach property.

Michaud said the government paid out \$250 million in insurance claims last year, while only collecting \$125 million in premiums.

But he defended the program anyway.

"It's better than the old system of disaster relief," he said. "Then the government paid all the cost of flood damage."

But in response to questions, Michaud conceded that his statement wasn't true. The government sometimes provided low interest loans for flood victims before the insurance plan was instituted, but gave few if any outright grants of money to private owners.



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
**PRESS INFORMATION**

Contact: Waldo E. Pray

289-2811

Jan. 4, 1984

EXHIBIT B

FOR RELEASE ON RECEIPT:

AUGUSTA--The Maine Department of Environmental Protection will implement a new fee system Monday (Jan. 12) in an effort to recover from applicants direct costs in processing state environmental licenses and permits.

The new fee system was authorized by the 111th Legislature at its first regular session. At the same time the Legislature directed the DEP to develop a new accounting procedure to accurately reflect direct costs involved in the licensing program. Fees will now go into a newly Created, non-lapsing Maine Environmental Protection Fund, which will be used to support the DEP's licensing program.

The new system is expected to provide about \$400,000 annually for the fund. The old fee schedule produced about \$55,000 annually which went into the state's general fund and was not available to reimburse the DEP for its costs.

The new fees were approved by the Board of Environmental Protection following a public hearing held here in September.

The new schedule divides the licensing process into three stages with a separate fee for the filing, processing and issuance operations.

Filing fees, which must be submitted with applications, range from \$2.50 for a Great Ponds shoreline alteration permit to \$75 for a license for a sanitary landfill. Processing fees range from \$15 for a residential waste discharge to \$10,000 for a major air emission license. Actual license fees range from \$10 for such minor things as Great Ponds permits and residential waste discharge licenses to as much as \$2,170 for a major waste discharge license. Processing and license fees are refundable if the license is denied.

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(12 p.c.)

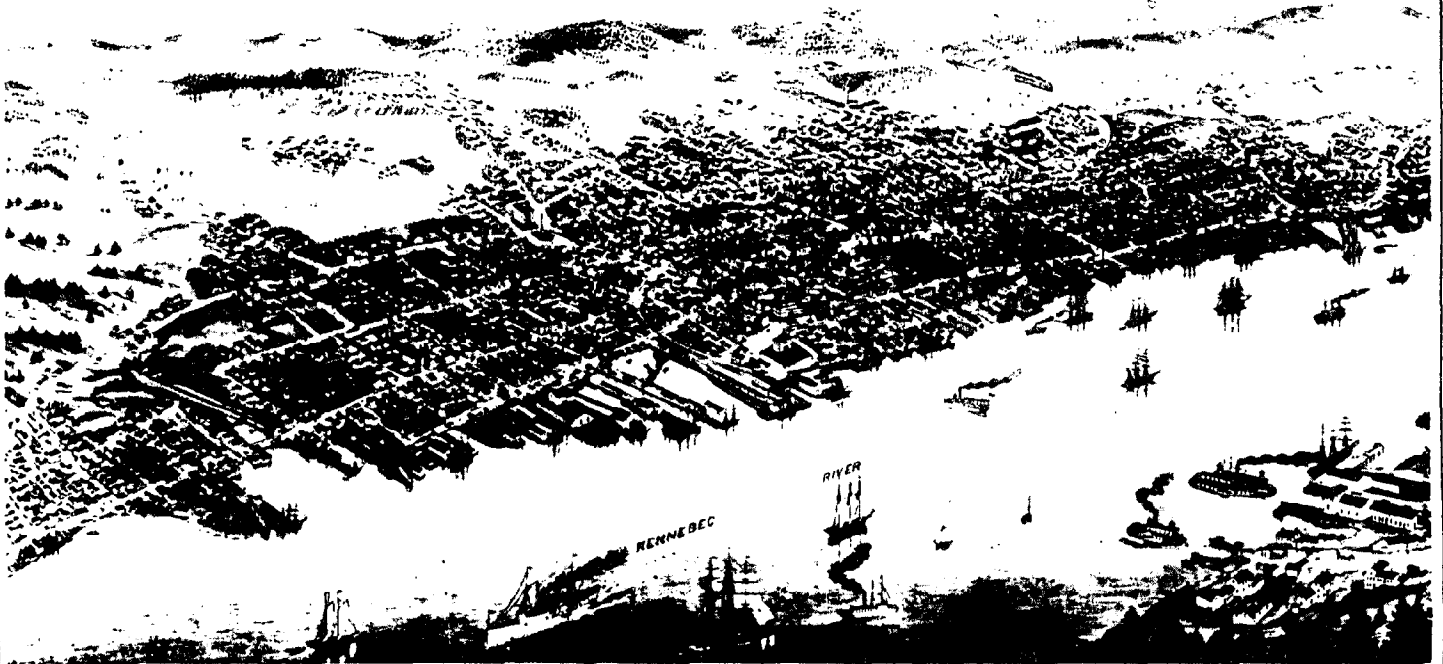
This was done as part of the  
~~Commission's~~ T.A. Part 5 - Dave  
said he sent a letter notifying us  
but no repr examining was involved.

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**PLANNING:**

# The Maine Perspective

EXHIBIT C



## A FOUR PART TELEVISION SERIES ABOUT PLANNING BOARDS AND LOCAL LAND USE REGULATION

This series is designed to provide planning board members, municipal officials, and developers with an understanding of planning practice and law in the State of Maine. It is brought to you with funding provided by Maine's Coastal Program and through cooperative efforts of the regional planning commissions and councils of government of Maine, the Eastern Maine Development Corporation, the State Planning Office, and the Towns of Hampden, Winterport, Stockton Springs, and Eddington.

Program design, format and coordination: Eastern Maine Development Corporation/Penobscot Valley Regional Planning Commission.

Contact your Regional Planning Commission, Council of Government, or the Maine State Planning Office for a series outline.

# PLANNING:

## *The Maine Perspective*

**MPBN Channel 12**

**6:00 - 7:00 PM**

**Tuesday, May 1, 8, 15, 22**

**WCBB Channel 10**

**10:30 - 11:30 AM**

**Saturday, May 5, 12, 19, 26**

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### **PROGRAM 1: Planning Boards**

This Program looks at planning boards: what they are; their responsibilities and source of authority, and how they relate to other institutions.

### **PROGRAM 2: Planning Design**

This Program will discuss planning design: how a development proposal should be put together and some design concepts to look for in good developments.

### **PROGRAM 3: Subdivision Review**

This Program will take an in depth look at the subdivision review process. The planning board of the fictitious town of Auburndale will conduct meetings and public hearings in a simulated review of a development proposal.

### **PROGRAM 4: Selected Planning Topics**

Program 4 will start with a panel of planners discussing various topics related to land use control at the local level, including zoning, ordinance enactment and condominiums. A second panel of planners and developers will then discuss the municipal regulatory review process.



C O P Y

EXHIBIT D

STATE OF MAINE  
EXECUTIVE DEPARTMENT  
STATE PLANNING OFFICE

JOSEPH E. BRENNAN  
GOVERNOR

RICHARD E. BARRINGER  
DIRECTOR

May 1, 1984

Kathryn Cousins  
Office of Ocean & Coastal Resource Management  
3300 Whitehaven Street, NW  
Washington, DC 20235

Dear Kathy,

In February I promised to let you know when the Maine Legislature acted on the findings of our Local Land Use Violation Commission. This letter explains what the Legislature enacted, and what new initiatives the State will implement to strengthen enforcement of our core laws.

On May 12 the Energy and Natural Resources Committee of the Maine Legislature enacted the minority report of LD 2096, AN ACT Relating to the Enforcement of Land Use Laws. Subsequently, Governor Joseph E. Brennan signed LD 2418, the minority report (copy attached) into law. The implications of this bill are far-reaching, and we are very pleased with its passage by the Legislature.

LD 2418 will significantly improve enforcement of Maine's State and local land use laws, especially those comprising the core to Maine's Coastal Program. The SPO will play a key role in assuring that all provisions of the law are successfully implemented.

Among the provisions of the new law are:

1. Shoreland Setbacks. The new law requires all principal structures in the shoreland area be set back at least 75 feet from the shore. This provision overrides local ordinances which previously exempted accessory structures from setback requirements.

2. District Court Jurisdiction Expanded. The District Court system now has the authority to order abatement or issue an injunction in cases involving violations of land use laws. Prior to enactment of LD 2418, District Courts could levy fines for certain land use violations, but they did not have the authority to order that violations be corrected. Previously, State and local officials had to file suit in Superior Court to get equity relief, even for minor violations. With a two-year backlog of cases in Superior Court, prosecution of minor violations was generally not pursued at either the State or local level.

Enactment of LD 2418 means that land use violations can be brought to court expeditiously, and the issues can be settled informally before a judge, rather than through a complex series of legal steps. Quicker prosecution of land use violations will effectively deter potential violators and demonstrate that State and local governments are serious about enforcing the law.

3. Certification Program for LPIs, CEOs, and DEP. The law establishes a certification program for code enforcement officers (CEOs), an additional certification program for local plumbing inspectors (LPIs), and one for Department of Environmental Protection (DEP) employees. The original bill would have given the DEP authority to certify code enforcement officers. However, the Legislature concluded that the Department of Human Services could expand its certification program for local plumbing inspectors to include CEOs.

The certification program will enable LPIs and CEOs to represent a municipality in District Court for cases of alleged land use violations. This will be particularly helpful to small towns since it reduces legal costs. Code enforcement will be expedited because resolution of alleged violations will come more quickly. These same officials will also have more authority when they confront violators in the field because they will be able to issue a court summons if compliance is not forthcoming. This is a substantial improvement in that LPIs and CEOs had to rely on their power of persuasion.

4. New Code Enforcement Officer Powers. The new law requires that all municipalities appoint a code enforcement officer and define their powers and duties. Prior to this law, code enforcement officers did not have the authority to take any direct action against a violator. Code enforcement officers were limited to recommending legal action to the municipal officers when efforts to obtain voluntary compliance failed. The new law states that upon



authorization from the municipal officers, the code enforcement officer may serve civil process (issue a summons) on a violator and, if certified and similarly authorized, to represent the municipality in court. While a few code enforcement officers have appeared in court on behalf of their municipalities, there has been no law authorizing them to do so. In fact, prior to this law the Maine Municipal Association has advised that code enforcement officers and local plumbing inspectors have no such authority.

5. DEP Deputization. The new law gives certain DEP staff the right to serve civil process and represent the State in District Court in cases involving alleged violations of DEP's land use laws. This is a substantial departure from past practice, when only the Attorney General, game wardens, and coastal wardens could take violators to court.

Staff enforcement will enable DEP to prosecute violations which are a low priority to the Attorney General's Office, but which are extremely important at the local level in terms of setting an enforcement example, establishing an enforcement presence, and demonstrating that no violations, however small, are acceptable. Consequently, the AG's Office can focus on the major, more involved violations.

6. New Penalty Provisions. The new law provides tougher, better defined, and consistent penalties for all land use laws. It provides that all penalties are civil penalties, and authorizes a District Court to order restoration. Previously, many penalty provisions were weak, none of them contained a minimum fine or standards to guide the judiciary in setting a penalty, and some contained criminal penalties which require a much higher standard of proof than civil violations. For example, the Alteration of Rivers and Streams Act states that the only remedy for a violation is a Court injunction; there are no provisions for restoration of the affected shoreland. Violations of the Great Ponds Act could only be treated as criminal matters, and a fine, not restoration, was the only remedy possible. The current penalty provision in the Subdivision Law of \$1,000 is insignificant compared to land prices in some parts of the State.

7. Expanded Liability. The new law also states that not only is the landowner liable, but so is his agent or contractor. In the past, many violations were caused by contractors who undertook work for an out-of-state landowner

who could not be reached by enforcement agents. This change allows municipalities to stop violations the moment they are discovered.

8. Award of Fees. As an inducement to municipalities to take legal action, the ACT states that the municipality shall be awarded attorney fees, expert witness fees, and costs when it is the prevailing party. However, the court may award the defendant such costs where the defendant is the prevailing party. This aspect of the law is significant because previously a violator could "outspend" a municipality, especially considering that most towns have little or no money set aside for prosecuting land use violations.

Finally, the Act states that in proceedings arising under the provisions of locally administered laws and ordinances, all fines shall be paid to the municipality. Previously, all fines went to the State's General Fund unless a specific ordinance provision stated otherwise.

This new law shall greatly enhance enforcement of all core laws, and overcomes inherent weakness in the laws created by weak penalty provisions.

9. Right of Entry. The law establishes a clear right for DEP staff and local officials to enter private land to inspect the property for compliance with State and local laws and regulations and to investigate complaints. This has always been a point of uncertainty, causing some State and local officials to refrain from doing inspections or to wonder if they could be sued for trespassing in such situations.

The original bill, LD 2096, had a \$100,000 appropriation to support new staff in the Department of Environmental Protection. The funds were to be used primarily to institute a mandatory CEO certification program, to collect shoreland zoning permit fees, and to train code enforcement officers. These DEP duties were eliminated when the Legislature determined that the Department of Human Services could train CEOs.

There are five major initiatives the State will pursue with existing State and coastal funds, during the next 12 months to implement LD 2418. These include:

1. Expedite Court Rule. One of the provisions of LD 2418 granted equity jurisdiction to District Court in cases involving alleged land use violations. For this provision to be operational, the Supreme Court must first adopt a

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Court Rule establishing procedures and requirements for hearing these cases. The Commission on Local Land Use Violations drafted a proposed rule. The State Planning Office will work with the State's Judicial Council to refine the proposal and expedite its adoption at the earliest possible date.

2. DEP Certification Program. LD 2418 authorizes DEP staff, who are certified as being familiar with court procedures, to represent the State in prosecuting violations of DEP laws. The law stipulates that the Department of Human Services shall be the certifying agency for DEP staff, as well as the agency for certification of local plumbing inspectors and code enforcement officers. The Act did not allocate any funding for this certification effort.

The SPO will work with the Department of Human Services in establishing a certification program. Although undefined at this time, the program will include a) the preparation of a handbook that fully describes the certification program, b) provision of training and eventual testing of staff, and c) a certification process including follow-up work.

The program will include a workshop featuring an attorney from the Judicial Council, an assistant attorney general, one or more district court judges, and public safety personnel who are familiar with issuing citations in other types of cases.

3. LPI-CEO Training and Certification Program. The State Planning Office will work with the DHS in establishing a training and certification program for local plumbing inspectors and code enforcement officers, pursuant to the requirements of LD 2418. The program will be modeled on the DEP certification program described above. The LPI/CEO programs will be held throughout the State at locations that are convenient for local officials.

4. Publications. There are several technical assistance publications which are in great demand, but which are out of print. These publications assist municipalities in the enforcement of core laws. These documents will be updated, when applicable, and reprinted for distribution to local officials. An additional publication will be prepared as a citizens' guide to the core laws.

5. Evaluation of the Effects of LD 2418. L.D. 2418 should greatly enhance the enforcement of Maine's core laws. The SPO will conduct a review of the Act to evaluate its effectiveness and recommend any needed changes.

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In addition, the SPO, through Task 1A of our 1984-85 Coastal Grant, will increase the level of shoreland zoning assistance to communities in the coastal zone by hiring a full-time person to undertake SPO's shoreland zoning responsibilities. This shoreland zoning officer will deal directly with individual communities, hold workshops, establish a public education program, and coordinate the detailed, day-to-day technical assistance efforts of regional planning agencies. The technical assistance efforts will emphasize proper administration and enforcement of the ordinance. This task will include the following elements.

- A. monitoring shoreland zoning activities in all coastal communities.
- B. documenting effective court enforcement actions.
- C. assisting in ordinance administration, including permit applications, appeals, and enforcement actions.
- D. reviewing the adequacy of local ordinances.
- E. obtaining up-to-date copies of all ordinances for SPO's central files.
- F. meeting with local planning boards and other officials to resolve shoreland zoning problems.

In conclusion, we are committed to implementing the Land Use Violation Commission findings, and are doing so in a cost-effective manner. We do not perceive the need, nor does the Legislature, to provide \$100,000 to the DEP because they were relieved of all responsibilities in LD 2418. By relying on existing State capacities we are minimizing start-up time to implement the provisions of the law, and maximizing the use of existing staff.

I am certain we shall see a noticeable improvement in the enforcement of the core laws. I trust you will agree that we are making significant progress. Please call me if you have any questions.

With best wishes,

Sincerely,



Richard E. Barringer

REB/aal/09a

cc: Doris Grimm  
David Keeley

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